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12 **THE HONORABLE MENDOZA, SALVADOR, JR.**

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14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF WASHINGTON
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20 JANE DOE,

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22 Plaintiff,

23 vs.
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25 ELSON S. FLOYD COLLEGE OF
26 MEDICINE AT WASHINGTON
27 STATE UNIVERSITY,
28 Defendant.

CASE No.: 2:20-CV-00145-SMJ

PLAINTIFF'S MOTION TO PROCEED
UNDER PSEUDONYM

29 I. INTRODUCTION

30 The Plaintiff—filed initially in Superior Court as Jane Doe and not altered
31 since removal—brings the following motion for a protective order protecting her
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1 identity from disclosure. This motion is currently opposed, though this was not
2 communicated to Plaintiff until the morning of filing and directly contradicts a
3 previous stipulation in writing from the Defendant wherein it was explicitly
4 indicated that any motions to proceed under pseudonym would not be opposed by
5 the Defendant. This motion incorporates a proposed protection order protecting
6 Jane Doe's name, birthdate, and any other obvious identifying information the
7 Court deems appropriate. Of the proposed order, only the protection of Jane Doe's
8 name is opposed by the Defendant.

11 II. PROCEDURAL BACKGROUND

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13 This case was initially filed in Spokane County Superior Court by the
14 Plaintiff on January 31, 2020. Counsel for the Plaintiff at the time of filing inquired
15 with Superior Court Staff as to filing under pseudonym and was informed to file
16 first and bring a motion later. Prior to the opportunity to bring a motion in State
17 Court, Defendant removed this case to Federal Court. At the time, Counsel for
18 Plaintiff was not barred federally and was playing catchup. At the time that
19 Plaintiff's counsel and Defendant's counsel agreed to the current protective order
20 in place related to discovery, Doe proceeding under pseudonym was discussed.
21 Counsel for the Defendant—at Ms. Doe's request—followed that conversation by
22 placing the stipulation for Ms. Doe to proceed under pseudonym as discussed
23 during that same conversation into writing. Plaintiff had been operating under the
24 belief that this motion was thus unopposed from July 1, 2020 to approximately
25 9am on the morning of this writing—February 22, 2021—due to detrimentally
26 relying upon a plain language reading of that email from AAG Ulrich that
27 summarized that phone conversation on July 1, 2020 indicating Counsel for the
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1 Defendant would "...not oppose any motion for [my] client to proceed under
2 pseudonym," and further indicated that he "...[knew] her real name, and [was] not
3 prejudiced by proceeding in pseudonym." *Exhibit A*. Counsel for the Plaintiff, a
4 sole practitioner with no staff, has been attempting to mount this case
5 singlehandedly against the attorney general's office and thus had not prioritized
6 what had not been indicated by the Defendant to be anything other than an
7 unopposed motion to proceed under pseudonym, focusing instead on ensuring that
8 all of the discovery has been reviewed and preparing for the numerous depositions
9 set by the Defendant. When the Court indicated the deadline for this motion,
10 Counsel for the Plaintiff noted the deadline, reread the written stipulation from
11 AAG Ulrich, and proceeded with review of discovery. Upon preparing this motion,
12 Counsel for the Plaintiff realized that there were exhibits that would be relevant to
13 the Plaintiff's argument and potentially helpful to the Court in making a
14 determination as to this issue. Counsel for the Plaintiff contacted Counsel for the
15 Defendant regarding a stipulation to file under seal pursuant to the protective order,
16 and the emailed response was the first indication to Counsel for the Plaintiff that
17 the Defendant had decided to oppose this motion for the purposes of trial.
18 Furthermore, as the emails today have progressed, Counsel for the Defendant has
19 vacillated between indicating that they "believe" this had previously been
20 discussed but were unsure to indicating that their position has remained unchanged
21 to indicating that their position has become "more detailed." *Exhibit B*. Counsel for
22 the Plaintiff has been consistent in her reliance on the same email that indicated the
23 same content since last July, and—as is indicated in the emails attached—would
24 have expressed concerns about any changes to the stipulation in writing sooner had
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1 they occurred previously, as the prejudice to Ms. Doe outlined below is of
2 tremendous concern. It should also be noted that Counsel for the Defendant
3 repeatedly mentioned the “current position” regarding stipulation; this implies that
4 the position had changed, but counsel for the Plaintiff was never notified and
5 continued to detrimentally rely on the initial stipulation. *id.*

8 III.ARGUMENT

9 In order for a Plaintiff to proceed under pseudonym, they must be able to
10 show that they can overcome the presumption against anonymity set forth in (case)
11 by showing that their need for their identity to remain cloaked trumps the public
12 right to knowledge by an analysis of the following three factors: “(1) the severity
13 of the threatened harm; (2) the reasonableness of the anonymous party's fears; and
14 (3) the anonymous party's vulnerability to such retaliation.” *DOES I Thru XXIII v.*
15 *Advanced Textile Corp.*, 214 F.3d 1058 (9th Cir. 1999.) Additionally, “The court
16 must also determine the precise prejudice at each stage of the proceedings to the
17 opposing party, and whether proceedings may be structured so as to mitigate that
18 prejudice.” *id.* In the case at bar, Plaintiff overcomes all three of these factors
19 and—as is discussed in the next paragraph—there is no prejudice to the Defendant.
20 The harm threatened to Ms. Doe is the possible ruination of her entire future; even
21 if she is permitted to return to medical school, she still must be selected for a
22 residency. As the facts alleged in the complaint deal with mental health issues,
23 domestic violence, and Ms. Doe standing up to her educational institution for the
24 rights of herself and future students, it is possible that should her name be
25 identified publicly, any one of these claims could negatively impact her ability to
26 match to a residency. The reasonableness of these fears is legitimate; unless a
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1 residency program denies Ms. Doe—or any other student for that matter—due to
2 her statutes as a member of a protected class and Ms. Doe can prove it, there will
3 be no recourse for Ms. Doe to preserve her future career. Ms. Doe is already older
4 than a traditional medical student—she was considered non-traditional due in part
5 to her age when she entered ESFCOM—and her disabilities also add to her
6 vulnerabilities. As it stands, Ms. Doe is raising claims in multiple areas that very
7 reasonably could affect placements. This creates an additional level of
8 vulnerability that warrants additional protections.
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12 It should also be noted that in this particular case, AAG Ulrich initially
13 indicated that he was “...not prejudiced by proceeding in pseudonym,” though he
14 has now indicated that he has concerns that his witnesses “...will likely be
15 stumbling over their words trying to remember to refer to her as Doe, which could
16 cause them to be perceived differently by the jury.” *Exhibit B*. Expecting a witness
17 to be careful while testifying is not prejudicial, especially when adequate time
18 remains to prepare witnesses properly for trial. Furthermore, counsel’s concerns do
19 not make sense. The witnesses in this case are almost exclusively doctors or soon
20 to be doctors, so they are familiar with having to be bound by privacy protections
21 under HIIPA. Furthermore, a great many of the witnesses in this case are also
22 educators, meaning they are doubly bound under FERPA. Additionally, the name
23 “Jane Doe” has long been used as a placeholder name for unidentified females in
24 the medical field, with a usage so established as to have been defined in medical
25 dictionaries both as:
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30 “Ethics: The name assigned to a terminally ill 13-yr
31 old girl with an irreversible neurologic disorder hospitalized at the Scottish
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1 Rite Children's Medical Center in Atlanta, whose treatment her doctors
2 deemed futile

3 Forensics: A name which may be assigned to an unidentified female admitted
4 to hospital without Identification or an unidentified female decedent.”¹

5 The pseudonym John or Jane Doe is used globally² in the medical field. It is
6 used often enough that there have been studies on the frequency of its use.³ How to
7 treat those with Doe designations is often a topic of ethical debate amongst the
8 medical community,⁴ and has even been featured on NPR.⁵ Defendant's claim that
9 using this commonplace term is going to somehow prejudice professionals who
10 work in a field that uses the term at least as often as legal professionals do just does
11 not make sense.
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13 Beyond any standards set in case law or concerns relating to prejudice, there
14 is significant public good that could come from Ms. Doe bringing this case before
15 the Court. As Ms. Doe's claims include serious concerns relating to University's
16 treatment of students and disparate applications of policies and procedures by those
17 involved in the disciplinary processes. It has become abundantly apparent through
18 the discovery process—and Ms. Doe anticipates will become even more clear
19 through depositions over the next several weeks—that the University was aware
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27 ¹ Jane Doe." Segen's Medical Dictionary. 2011. Farlex, Inc. 22 Feb. 2021 <https://medical-dictionary.thefreedictionary.com/Jane+Doe>

28 ² Cause Of Death in "John Doe & Jane Doe": A 5 Year Review
29 Kumar A; - <https://pubmed.ncbi.nlm.nih.gov/25302219/>

30 ³ Leonard J Paulozzi, John and Jane Doe: the epidemiology of unidentified decedents Journal of forensic sciences,
31 <https://pubmed.ncbi.nlm.nih.gov/18489552/> (last visited Feb 22, 2021).

32 ⁴ Bonnie Steinbock, Baby Jane Doe in the Courts, 14 The Hastings Center Report 13 (1984),
33 https://www.jstor.org/stable/3560843?read-now=1&seq=1#metadata_info_tab_contents.

34 ⁵ How Hospital Er Sleuths Race To Identify An Unconscious Or Dazed Jane Or John Doe
Susan Abram - <https://www.npr.org/sections/health-shots/2019/05/07/720702299/how-hospital-er-sleuths-race-to-identify-an-unconscious-or-dazed-jane-or-john-do>

1 that they were not applying disciplinary policies and procedures to concerns
2 relating to her as they were officially written. *Exhibit C-D*. Of even more concern,
3 it is indicated repeatedly in writing that members of University staff are unclear
4 about what the policies and procedures actually are. *Exhibit E*. In this regard, Ms.
5 Doe is acting almost as a sort of quasi-whistleblower⁶ to ensure that the University
6 is being held accountable for their actions in regards to her claim so that these
7 actions are not repeated in the future when dealing with other students. Traditional
8 statutory whistleblower protections do not necessarily include proceeding through
9 a case with anonymity, but granting this protection is not barred by statute either,
10 and is ultimately in the best interest of the public when the Defendant is a public
11 agency. By having the courage to confront her educational institution, Ms. Doe is
12 not only attempting to ensure that she is treated fairly, but is hoping that the
13 University will be held accountable so that this does not happen to another student.
14 She knows realistically that she may not be able to return to school—as was
15 referenced repeatedly in oral argument on Plaintiff’s motion for a preliminary
16 injunction, the Defendant has a policy requiring the program be completed within
17 six years—but Ms. Doe is proceeding with this suit to ensure that no other student
18 is treated the way she was. That kind of courage can come with the price of
19 retaliation in the form of unforeseeable consequences when the opposing party is a
20 public agency, and Ms. Doe is concerned about what her future may be.
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31 ⁶ To be clear, Plaintiff is aware that she is not a whistleblower in the classic sense and is not arguing that she should
32 be entitled to protections as such. Instead, the argument is that speaking out against bad action by public agency is in
33 the best interest of the public, regardless of whether an individual’s motives are entirely altruistic or if they are
34 getting some portion of benefit for themselves and are also hoping to help others.

1 stipulated in writing that they would not oppose any motions filed by Ms. Doe to
2 proceed in pseudonym.
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8 DATED this 22 day of February 2021.
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12 /S/ Sarah L. Freedman

13 Sarah L. Freedman, WSBA #51111

14 Attorney for Plaintiff
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V. PROPOSED ORDER

The Plaintiff proposes the following protective order:

Unless otherwise ordered or authorized by the Court, any and all references in pleadings and proceedings to the Plaintiff in this action shall under the pseudonym “Jane Doe.” Any materials or documents presented at trial to the jury will be redacted to ensure that the pseudonym is protected. Any references to the Plaintiff’s date of birth, student ID number, or similarly identifying information shall be similarly redacted. Likewise, any and all testimony elicited from witnesses will utilize “Jane Doe” as the name of the Plaintiff in this action.

1 I hereby certify that on February 22, 2021, I electronically filed the foregoing with
2 the Clerk of the Court using the CM/ECF System which will send notification of
3 such filing to the following, and/or I hereby certify that I have mailed by United
4 States Postal Service the document to the following non-CM/ECF participant(s):
5 Nicholas Ulrich, Assistant Attorney General
6 Katie Merrill, Assistant Attorney General.
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8 s/Sarah L. Freedman
9 SARAH L. FREEDMAN
10 Attorney for Plaintiff
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